

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5887 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANAIYALAL U JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioner

MS SIDDHI TALATI for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/09/97

C.A.V. JUDGEMENT

1. The petitioner, a Police Head Constable in the Police department of the Government of Gujarat, filed this special civil application and prayer has been made for direction to the respondents for quashing and setting aside of the selection result for promotion to the post of Police Sub Inspectors held in the year 1982-83 and also the result of the petitioner communicated to him by letter dated 9th April, 1985 and further direction to the

respondents to hold the fresh oral test for the purpose of selection for promotion to the post of Police Sub Inspectors.

2. The grievance of the petitioner is that the interview of the petitioner taken by the selection committee was nothing but only a formality. Further grievance has been made that irrelevant questions were put to the petitioner in the interview. It has further been stated that one member asked the question which has no relevance whatsoever to the selection by promotion to be made to the post of Police Sub Inspector. So the entire selection, as per the petitioner's case was farce and conducted by the members of the Board without any sense of their responsibility. The next grievance has been made that the petitioner's service record has also not been examined properly. The grievance of the petitioner is that before the Examination Board complete service record of the petitioner upto the year 1983 was not produced.

3. Reply to the special civil application has been filed by the respondents and all the averments made by the petitioner have been controverted therein.

4. The counsel for the petitioner contended that the rejection of the petitioner for promotion for the post of Police Sub Inspector is arbitrary. It was not an interview whatsoever, but the members of the selection committee acted arbitrarily. The service record of the petitioner has also not been given due weightage as the complete record was not before the selection committee.

5. On the other hand, Smt. Siddhi Talati, the counsel for the respondents contended that these are the matters of selection to be made by the selection committee and this Court may not sit as a Court of appeal over the decision of the selection committee. It has next been contended that such type of allegations are easy to make and on the basis of such allegations this Court may not interfere in the matter. What the petitioner has attempted to have a fishing inquiry from this Court. The sanctity of the selection made by the selection committee should have been accepted and it is open to judicial scrutiny by this Court where the petitioner has made out a case of malafide against the members of the selection committee, which is not the case here. Lastly, the counsel for the respondents, Smt. Siddhi Talati, contended that the petitioner has made all vague averments in respect of what has been transpired in the interview as well as regarding his service record and

no cognizance should be taken of those things by this Court sitting under Article 226 of the Constitution.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. I do find sufficient merits in the contention of Smt. Siddhi Talati, the counsel for the respondents that the petitioner is an interested person and after his rejection in the selection, he could have raised any sort of grounds before this Court. The selection for promotion to the post of Police Sub Inspector was to be made on the basis of the performance of the candidate in the written test as well as in the interview and on the assessment of the service record. For written examination, the marks prescribed were 700 whereas for the interview the marks prescribed were 50 and for assessment of the service record, 100 marks were prescribed. How the marks for the service record are to be given, sufficient guideline has been given to the selection committee. So out of 850 marks, only 50 marks have been prescribed for the viva-voce. The written test was held in the year 1983, but when the interview had taken place, the petitioner has very conveniently not given the date in the special civil application. However, vide letter dated 9th April, 1985, the petitioner has been informed of the fact that he has not been selected for the post and this special civil application has been filed by the petitioner before this Court on 7th October, 1985. Though there may not be any delay in filing of this special civil application on which petition has to be dismissed, but this period of about six months which has been taken by the petitioner in filing of this special civil application is relevant to the plea which has been taken by the petitioner in the special civil application. The affidavit which has been filed by the petitioner in this special civil application is also to be taken note of. The averments made by the petitioner in the special civil application and particularly the averments made in Para Nos.8 and 9 are stated to be true to the knowledge, information and belief of the petitioner. The petitioner has not made a statement, as contended in Para Nos. 8 and 9, on the basis of his own knowledge. If we go by the aforesaid affidavit, these averments may be on the basis of information or belief. Above that, in Para No.8 of the petition, the petitioner has stated that, by the selection board irrelevant questions were put to him. He has not disclosed what were the irrelevant questions put to him. However, in next breath, he stated that one member asked certain questions to the petitioner as

mentioned in Para No.8 which have no relevance whatsoever to the selection to be made on the post of Police Sub Inspector, but curiously enough the petitioner has not disclosed the name of the member. Over and above, that member has not been made a party to this special civil application. The matter has not ended here. In case, it would have been a fact as what the petitioner has stated then immediately after the interview was over, he should have raised a protest, which he has not done. So it is a clear case where the petitioner had no grievance whatsoever with this interview taken by the selection committee till he filed this special civil application before this Court. The petitioner should have in fact made a protest immediately after the interview if it would have been a fact as stated by him in Para No.8. That has not been done, as stated earlier, but the worst part of it is that after receipt of the letter dated 9th April, 1985, the petitioner has not made such a complaint to the higher authorities. So this ground which has been made by the petitioner is nothing but only a manufactured or a concocted ground. I am fortified to take the aforesaid view by the further fact that the petitioner has not impleaded the members of the selection committee as party to this special civil application. In the absence of those members otherwise also this type of allegations made by the petitioner could not have been accepted. These allegations are purposely made by the petitioner and it cannot be accepted to be true looking to the aforesaid facts.

8. The second grievance which has been made by the petitioner is also devoid of any substance. It is too difficult to believe on the statement made by the petitioner that his complete service record upto 1983 was not produced before the Examination Board. In Para No.9 of the special civil application, the petitioner made an averment in respect of the aforesaid grievance, which reads, "The petitioner has come to know that the Examination Board had not with them the complete record of the petitioner upto 1983". The petitioner could not have the personal knowledge of this fact. This fact has been disclosed by the petitioner on the basis of what he came to know, but the petitioner has not disclosed the source from which he has come to know about this fact. In the absence of disclosure of that source coupled with the other attending circumstances, which has been noticed earlier, this contention of the counsel for the petitioner cannot be accepted.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged.

zgs/-